

AMENDMENTS TO THE CLAIMS

Listing of Claims:

What is claimed is:

1. (Canceled).
2. (Currently amended) A cargo restraining brace comprising:
 - A. a fork-shaped portion defined by two parallel, spaced apart legs extending perpendicularly from a cross-member; and
 - B. a locking portion extending from said cross-member in a direction substantially opposite said parallel legs, said locking portion comprising a telescoping locking leg and an adjustment mechanism,
 - C. wherein each leg is comprised of a first tube axially nested inside a second tube such that said first ~~[[tubes]]~~ tube is capable of telescoping movement relative to said second tube.
3. (Previously presented) A cargo restraining brace comprising:
 - A. a fork-shaped portion defined by two parallel, spaced apart legs extending perpendicularly from a cross-member; and
 - B. a locking portion extending from said cross-member in a direction substantially opposite said parallel legs, said locking portion comprising a telescoping locking leg and an adjustment mechanism,
 - C. wherein each parallel leg is further defined by a distal end and a proximal end and a shaft perpendicularly extending from the proximal end of said parallel leg.

4. (Original) The cargo restraining brace of Claim 3, wherein said perpendicularly extending shaft is provided with a plurality of adjustment elements along at least a portion of its length.
5. (Original) The cargo restraining brace of Claim 4, wherein said adjustment elements are apertures.
6. (Original) The cargo restraining brace of Claim 4, wherein said adjustment elements are teeth.
7. (Original) The cargo restraining brace of Claim 4, wherein said adjustment elements are threads.
8. (Previously presented) The cargo restraining brace of Claim 3, wherein each parallel leg further comprises a securing foot attached to the distal end of said parallel leg.
9. (Previously presented) The cargo restraining brace of Claim 8, wherein each securing foot comprises a rigid plate perpendicularly attached to said respective leg and an outwardly facing friction pad mounted on said rigid plate.
10. (Original) The cargo restraining brace of Claim 9, wherein said friction pad is rubber.
11. (Previously presented) The cargo restraining brace of Claim 3, wherein said cross-member is defined by opposite, open ends each of which is disposed to slidingly receive an end of said shaft of said respective leg.
12. (Previously presented) The cargo restraining brace of Claim 11, wherein each of said cross-member open ends is provided with an adjustment element and the end of said shaft of each respective leg is provided with a plurality of adjustment elements.
13. (Previously presented) The cargo restraining brace of Claim 12, wherein said adjustment elements of the cross-member and the respective legs are apertures.

14. (Previously presented) The cargo restraining brace of Claim 12, wherein said adjustment elements of the cross-member and the respective legs are threads.
15. (Currently amended) The cargo restraining brace of Claim 11, further comprising a locking mechanism to secure said shaft of said leg to said cross-member and a plurality of adjustment elements along at least a portion of the length of said shaft.
16. (Original) The cargo restraining brace of Claim 15, wherein said locking mechanism is a spring loaded pin.
17. (Original) The cargo restraining brace of Claim 15, wherein said adjustment elements are apertures and said locking mechanism is a spring loaded pin that seats in said apertures.
18. (Original) The cargo restraining brace of Claim 15, wherein said adjustment elements are teeth and said locking mechanism is a ratchet that engages said teeth.
19. (Previously presented) The cargo restraining brace of Claim 2, wherein the first tube of a one of said parallel legs is provided with a plurality of adjustment elements along at least a portion of said first tube's length.
20. (Original) The cargo restraining brace of Claim 19, wherein said adjustment elements are apertures.
21. (Original) The cargo restraining brace of Claim 19, wherein said adjustment elements are teeth.
22. (Original) The cargo restraining brace of Claim 19, wherein said adjustment elements are threads.
23. (Currently amended) The cargo restraining brace of Claim 2, further comprising a locking mechanism to secure the first tubes of ~~a parallel leg to said second tube of~~ each said parallel leg to said respective second tube of each said parallel leg.

24. (Original) The cargo restraining brace of Claim 19, wherein said adjustment elements are apertures and further comprising a spring loaded pin that seats in said apertures.

25. (Original) The cargo restraining brace of Claim 19, wherein said adjustment elements are teeth and further comprising a ratchet that engages said teeth.

26-32 (Canceled).

33. (Currently amended) ~~[[The]]~~ A cargo restraining brace of Claim 32, comprising:

A. a fork-shaped portion defined by two parallel, spaced apart legs extending perpendicularly from a cross-member; and

B. a locking portion extending from said cross-member in a direction substantially opposite said parallel legs, said locking portion comprising a telescoping locking leg, defined by a distal end and a proximal end such that said telescoping locking leg is attached to said cross-member at said proximal end of said telescoping locking leg, and a ratchet mechanism capable of incrementally moving said telescoping locking leg upon actuation of said ratchet mechanism,

C. wherein said telescoping locking leg comprises a first tube, a second tube such that said first tube is axially nested inside said second tube and said tubes are capable of telescoping movement relative to one another, and a securing foot attached to the distal end of said telescoping locking leg, wherein said securing foot comprises comprising a rigid plate perpendicularly attached to said telescoping locking leg and an outwardly facing friction pad mounted on said rigid plate.

34. (Original) The cargo restraining brace of Claim 33, wherein said friction pad is rubber.

35. (Canceled).

36. (Currently amended) The cargo restraining brace of Claim [3], wherein said adjustment ~~elements are apertures~~ mechanism is an aperture, said cargo restraining brace further comprising a spring loaded pin that seats in said ~~apertures~~ aperture.
37. (Currently amended) The cargo restraining brace of Claim [3], wherein said adjustment ~~elements are~~ mechanism is teeth, said cargo restraining brace further comprising a ratchet that engages said teeth.
- 38-42. (Canceled).
43. (Original) The cargo restraining brace of Claim 2 further comprising an additional cross-member extending between said parallel legs, said additional cross member capable of being secured selectively along the length of said parallel legs.
44. (Original) The cargo restraining brace of Claim 43 wherein said additional cross member is secured between the first tubes of said parallel legs.
45. (Currently amended) A cargo restraining brace comprising:
- A. three telescoping legs, each leg having a first tube axially nested inside a second tube such that each of said first tubes is capable of telescoping movement relative to the respective second tube in which it is nested;
 - B. a first cross-member defined by first and second ends, wherein one of said telescoping legs is perpendicularly attached to said cross member at a point between said ends and extends in a first direction and wherein each end of said cross member has another one of said telescoping legs telescopingly attached perpendicularly thereto such that said another ones of said legs extend perpendicularly from said cross member and parallel with one another and in a direction opposite said first direction; and

- C. a locking mechanism to secure said first and second tubes of one of said legs to one another.
46. (Previously presented) The cargo restraining brace of Claim 45, wherein said first tube of one of said legs is provided with a plurality of adjustment elements along at least a portion of its length.
47. (Original) The cargo restraining brace of Claim 46, wherein said adjustment elements are apertures.
48. (Original) The cargo restraining brace of Claim 46, wherein said adjustment elements are teeth.
49. (Original) The cargo restraining brace of Claim 46, wherein said adjustment elements are threads.
50. (Original) The cargo restraining brace of Claim 46, wherein said adjustment elements are apertures and further comprising a spring loaded pin that seats in said apertures.
51. (Original) The cargo restraining brace of Claim 46, wherein said adjustment elements are teeth and further comprising a ratchet that engages said teeth.
52. (Previously presented) The cargo restraining brace of Claim 45 further comprising a biasing mechanism in at least one of said legs to urge at least one said leg outward.
53. (Original) The cargo restraining brace of Claim 45 further comprising an additional cross-member extending between said parallel legs, said additional cross member capable of being secured selectively along the length of said parallel legs.
54. (Original) The cargo restraining brace of Claim 53 wherein said additional cross member is secured between the first tubes of said parallel legs.
55. (Previously presented) A cargo restraining brace comprising:

- A. no more than three telescoping legs, each leg having a first tube axially nested inside a second tube such that each of said first tubes is capable of telescoping movement relative to the respective second tube in which it is nested;
- B. a first cross-member defined by first and second ends, wherein a first one of said telescoping legs is perpendicularly attached to said cross member at a point between said ends and extends in a first direction and wherein each end of said cross member has another one of said telescoping legs telescopingly attached perpendicularly thereto such that said another ones of said legs extend perpendicularly from said cross member and parallel with one another in a direction opposite said first direction; and
- C. a locking mechanism to secure said first and second tubes of one of said legs to one another.

ARGUMENTS

Claims 2-25, 33-34, 36-37 and 43-55 remain pending in the application. Claims 1, 26-32, 35 and 38-42 have been canceled. Independent Claims 2 and 45 have been amended. Dependent Claim 33 has been amended to independent form and dependent Claims 15, 23, 36 and 37 have been amended.

With respect to the claims, the Examiner has indicated that Claims 2, 12-25, 29, 31, 36-37 and 43-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In view of Examiner's rejections of Claims 2, 12-25, 29, 31, 36-37 and 43-54 under 35 U.S.C. 112, second paragraph, Applicant has canceled Claims 29 and 31 and has amended Claims 2, 15, 23, 36-37 and 45 to overcome the rejections.

The Examiner rejected Claim 2 as being somewhat confusing. Claim 2 was amended according to the Examiner's suggestion that "said first tubes" be replaced with "said first tube." This amendment now places Claim 2 in allowable form. Claims 19, 20, 43 and 44 which depend from Claim 2, are correspondingly allowable.

The Examiner rejected Claim 12 because the element "the end" was believed to lack antecedent basis. Applicant argues that the element "the end" has proper antecedent basis. Claim 12 properly depends upon Claim 11, which uses the term "an end of said shaft." Claim 12's reference to "the end of said shaft" clearly has proper antecedent basis because Claim 11 introduces the element and Claim 12 properly depends upon Claim 11. Thus, Claim 12 is already in allowable form. Claims 13 and 14, which depend from Claim 12, are correspondingly allowable.

The Examiner rejected Claim 15 because the element "said ... adjustment elements" lacked proper antecedent basis. Applicant amended Claim 15 so that the element "adjustment elements" is

properly introduced. This amendment now places Claim 15 in allowable form. Additionally, Claim 17's and 18's use of the element "said adjustment elements" now has proper antecedent basis due to Claim 15's amendment. Claims 16-18, which depend from Claim 15, are correspondingly allowable.

The Examiner rejected Claims 21-22 and 24-25 for being confusing since the recited adjustment elements are apparently inconsistent with the parallel legs as disclosed. These claims state that the adjustment elements could be teeth, threads, apertures with a spring loaded pin that seat in the apertures, and teeth with a ratchet that engages the teeth. Applicant has amended the specification so that these adjustment elements recited in the claims are now consistent with the now disclosed parallel legs taught in the specification. The amendment to the specification does not violate 35 U.S.C. 132 (new matter) since these claims are original claims and provides proper disclosure to support the specification's amendment. Thus, Claims 21-22 and 24-25 are in allowable form.

The Examiner rejected Claim 23 for being somewhat confusing. Claim 23 was amended according to the Examiner's suggestion that "a parallel leg to said second tube of" be replaced with "each said parallel leg to said respective second tube of each." This amendment now places Claim 23 in allowable form.

The Examiner rejected Claims 36-37 because the element "said adjustment elements" in each claim lacks clear antecedent basis. Applicant amended both claims and replaced the element "said adjustment element" with the element "said adjustment mechanism." As amended, Claims 36 and 37 both depend upon Claim 3. Claim 3 provides proper antecedent basis for the element "said adjustment mechanism." Thus, Claims 36-37 are now in allowable form.

The Examiner rejected Claim 45 for being somewhat confusing. Claim 45 was amended according to the Examiner's suggestion that "that" be inserted after "such" to clarify the claim as best understood. This amendment now places Claim 45 in allowable form. Claims 46-54, which depend from Claim 45, are correspondingly allowable.

The Examiner has also rejected Claims 1, 26-32, 35, 39 and 40-42 under 35 U.S.C. 103(a) as being unpatentable over Moses in view of Bishop and Claims 1 and 38 under 35 U.S.C. 103(a) as being unpatentable over Moses in view of Oliviero. Additionally, the Examiner has objected to Claims 33-34 as being dependent upon a rejected base claim. Finally, the Examiner has allowed Claims 3-11 and 55. With respect to Examiner's rejections of Claims 1, 26-32, 35 and 38-42 under 35 U.S.C 103(a), Applicant has canceled those claims, thus overcoming the Examiner's rejections.

In view of the Examiner's objections to Claims 33-34, Claim 33 has been re-written in independent form to include all of the elements of the claims from which they previously depended, namely rejected independent base Claim 1 and dependent Claims 26-27 and 32. Claim 33 is now in allowable form. Claim 34, which depends from Claim 33, is correspondingly allowable.